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In re Application of: GREGG, Brian A. :
U.S. Application No.: 10/535,561 :
PCT Application No.: PCT/US04/30201 : DECISION ON
Int. Filing Date: 16 September 2004 : PETITION UNDER
Priority Date Claimed: 16 September 2003 : 37 CFR 1.78(a)(6)
Attorney Docket No.: PCT/03-15 :
For: Organic Photovoltaic Cells with an Electric :
Field Integrally-Formed at the Heterojunction :
Interface :
:

This decision is a response to Applicants' "Petition to Accept An Unintentionally Delayed Claim Under 37 CFR 1.78(a)(2)(ii)", filed 31 May 2006, requesting acceptance of an unintentionally delayed claim for priority under 37 CFR 1.78(a)(2)(ii). Because the petition pertains to a priority claim to a prior-filed *provisional* application, the petition is being treated as a petition under 37 CFR 1.78(a)(6) to accept an unintentionally delayed claim for priority under 35 USC 119(e) for the benefit of the prior-filed provisional application, 60/503,336, filed 16 September 2003.

The petition under 37 CFR 1.78(a)(6) is **DISMISSED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the non-provisional application. In addition, the petition must be accompanied by:

- (1) the reference required by 35 USC 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in 1.17(t); and
- (3) a statement that the entire delay between the date the claims was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was

unintentional. The Director may require additional information where there is a question whether delay was unintentional.

The instant pending non-provisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed provisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(6).

Regarding item (1), Applicant has failed to provide a reference to the above-noted, prior-filed provisional application as provided by 37 CFR 1.78(a)(5)(iii). Specifically, the reference must either appear in the first sentence of the specification or in an application data sheet (ADS). Therefore, this item has not been satisfied.

Regarding item (2), Applicant has authorized payment of the \$1,370 surcharge fee as required by 37 CFR 1.17(t), through Deposit Account No. 14-0460. Therefore, this item has been satisfied.

Regarding item (3), Applicant's statement "the undersigned declares that the date of the claim as filed was unintentional due to a typographical error in the serial number" fails to indicate that the entire delay was unintentional. Therefore, item (3) has not been satisfied.

Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 USC 119(e) to the above-noted, prior-filed provisional application does not satisfy all of the conditions of 37 CFR 1.78(a)(6), the petition is dismissed.

Before the petition under 37 CFR 1.78(a)(6) can be granted, a renewed petition under 37 CFR 1.78(a)(6) is required. Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PCT
 Attn: Office of PCT Legal Administration
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Service Window
 Mail Stop PCT
 Randolph Building
 401 Dulany Street
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Any questions concerning this decision may be directed to the Office of PCT Legal Administration. All other inquiries concerning either the examination procedure or status of the application should be directed to the Technology Center.



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